Mr. James O'Neill, Deputy Archivist
The National Archives
Wash.,D.C. 20408

8/7/76

Dear Mr. O'Neill,

Your letter stamp dated August 5 came today, with attachments. I respond without having had the opportunity to compare your letter with the earlier ones or the pages provided with earlier versions of these records in order to obtain clarifications and records relevant to this appeal and the withholdings and reversal of the withholdings.

It has been so long you may not recall my explanation of the consequences of last year's phlebitis but it is limiting and I do not have ready access to all my files. It is now awkward for me to type and to leave the typing because I must sit in a position that has my legs horizontal and in a manner that does not cut off circulation. If I thus do not cite specific records I hope you will understand that I do not intend to burden you as indefinite responses do burden me.

This illness and hospitalization are at least partially responsible for my not being able to appeal Mr. Leisinger's denial of last July 31. However, I did appeal it January 3 of this year. The law permits you 20 working days to process the appeal. It is more than seven months. In this long interval I recall no communication from you on it. There are some agencies which do have heavy loads of requests. I have not heard that this is true of NARS. As you note, part of this is directly relevant in current litigation. That suit was filed long before this appeal. You represent the defendant. It is, I believe, apparent that other parts of this request and appeal are relevant in that case. You are also aware, I am confident, that this law has always required promptness in handling FOIA requests. The amended law requires good faith and due diligence claims of which I have presented to me with unbecoming regularity in these suits. With this incomplete explanation I hope you can understand my deep interest in knowing the reasons if any for this extraordinary delay which you do not address in any way.

Particularly because this is before a court I request all relevant records on the initial denials and the appeal, including all records of classification and declassification and withholding and disclosure where the records were not classified. Your letter is ambiguous where it addresses only continued withholding, cites no authority, only the person by whom the request was made of you. It does not even allege that Mr. Wilson is duly qualified. It is, however, limited to what you still deny me. As you are aware the Warren Commission lacked any legal authority to classify anything and only after the fact was it granted authority that was limited to declassification. NARS is its successor. You refer to a review. My understand of E.O. 11652 is that it requires the keeping of records of the nature referred to above.

This is not a frivolous request. I have skimmed those pages enclosed with your letter and in no case do I find any basis for any withholding - ever.

In this connection, to avoid the laborious task of a word-by-word comparison and because it may become relevant in court I also ask for copies of the pages just provided that show the parts previously withheld.

As best the vacuum you present me permits I'll address your claims to exemptions in their order of appearance.

With respect to Item 7 you list 13 withholdings, you cite (b)(1) and (3) without specifying which applies or is claimed to apply to any one withholding. With regard of (b)(3) you cite only 50 U. S. C. 403(d) with no further explication. You cite no executive order. From my reading of those pages not withheld it seems at least unlikely that there is a genuine national-security issue here. With the lapse of all these years this becomes even more improbable. With respect to pages 56,109 and 110 you cite (b)(6). It is obvious that the Coleman-Slawson memo is not and cannot be "personnel or medical files." There are controlling decisions on this exemption. There have also been some riddiculous claims to this exemption. In addition, you cite no authority for this. I do question the appropriate-

mess if it is CIA. With regard to three appendixes you cite (b)(1) without specifying which part or of (B) what executive order. Without the passing of all this time there is high improbability that there was or even could have been a legitimate national-defense content in Oswald's foreign activities.

Under Item 9, Nosenko records, the first withheld is the totally undescribed (f). The citation of (b)(1) suffers the defect explained above. You also claim (b)(5). Were this exemption applicable virtually no record of the Warren Commission would not be exempt. With (j) you again cite (b)(1) without specifying which part and (b)(7)(c) and (d). From a reading of what is not deleted there seems to be no possibility of any proper application of the first claim. The investigator-file exemption requires first of all what is totally missing here, a law enforcement purpose. (C) does not exempt what might be considered an invasion of personal privacy but one that is "unwarranted." I know of no prior case in which the identity of a person interviewed, and there were thousands, was claimed to fall within this exemption - going back to before there was the FOIA. (D) also has two parts. You do not specify which. Reading what was not masked provides no basis for any belief there could have been either a law enforcement purpose in which a confidential informant was or could have been used. (The Commission, I remind you, have no law-enforcement responsibilies and is explicit in declaring it and the FBI's investigation, as Mr. Hoover swore, was not for law enforcement.) This clearly was not "a lawful national security intelligence investigation." Moreover, other relevant records dealing with what is dealt with in this synopsis are not withheld and have not been. I published some years ago after the NARS provided them.

You have replaced some of the deletions in the records relating to the withholding. I would appreciate a copy from your records showing which withheld passages are now not withheld in order to avoid the need to make a word-by-word comparison and, of course, to facilitate checking the legitimacy of the prior withholding. With regard to those current maskings I ask your assurance that you have not masked what is public knowledge.

As you well know, I am aware I can go to court over the withholding of records. I hope you appreciate that court is not only a last resort and a needless expense all around given the record between the government and me in court but has become a needless imposition on the courts. I therefore hope that you will have another review and ask the right questions where you may not have personal knowledge.

Some time ago I asked to be sent copies of all Commission records that had been withheld as they were released, pointing out that with all the work I have done on this there is no other way I can be sure of having complete files or even knowing what you do release. You refused. I was not able to carry this further then. Since then I have been reminded that NARS did, years ago, promise to send me all released records in a certain category. it has not. This includes records for which I made specific request. I do hope you will reconsider my rejected request. It is impossible for me to go to the Archives and do this work there as it is in effect to deny access to citizens in say Alaska and Hawaii. As of the time of that request it presented no real problem to NARS. It has been a serious intrusion into my work and my capability for work that is without equal in the amount of time invested and the amount of records published. Frankly, when the government has bitter-ended and stonewalled so much on this and I have overturned it as often as I have there is at least the unseemly inference of vindictiveness once my health became a problem and limited my ability to go to the Archives building.

Sincerely,

Harold Weisberg